IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6744 OF 2004

S.K.Shinde .. Petitioner

Versus

Pune Municipal Corporation

and Ors. .. Respondents

WITH

WRIT PETITION NO.6722 OF 2004

Dynanesh A. Dhamdhere .. Petitioner

Versus

Pune Municipal Corporation

and Ors. .. Respondents

Mr.P.B.Shaligram for petitioner

Mr.V.G.Mujumdar for respondent No.1

Mr.P.M.Patil, A.G.P. for State.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.
DATE : 3rd NOVEMBER 2004.

P.C.

1. These petitions were argued together and are being disposed of by a common order. They pertain to allotment of shops by Pune Municipal Corporation.

2. Petitioners in these petitions had applied for allotment of shops in pursuance of a public tender. It is not in dispute that tenders were invited by Pune Municipal Corporation for allotment of shops/ galas on lease. These shops/ galas are located in Pune and more particular description thereof is in the tender notice.

3. In W.P. 6744 of 2004 public notice was issued on 10th December 2002 in daily newspapers inviting tenders for allotment of shops more particularly described in this notice. Minimum offset price i.e. rent was Rs.3372/- per month

for each shop. It was mentioned in the tender notice that the Municipal Commissioner reserves right to accept or reject any tender. It appears that tenders were submitted by various parties. They were opened on 30th December 2002 at 4.00 p.m. It appears that one Sanjay Shirke quoted highest rate i.e. Rs.12,112/- per month for shop No.1 and one Amar Bhagat quoted highest rent of Rs.11,151/- per month for shop No.4. It appears that tenders submitted by Shri Shirke and Bhagat were accepted vide resolution No. 103 dated 22nd May 2003. This is a resolution of General Body. It appears that Shri Shirke and Shri Bhagat failed to deposit rents for three months in advance within the stipulated period as per the terms and conditions of the tender. Hence, the Municipal Commissioner vide his order dated 30th August 2003 directed that their offers be rejected.

4. After this order, Notice dated 3rd October 2003 was issued in daily newspapers. In other words, fresh tenders were invited by this notice. Terms and conditions remained the same. Tenders received in pursuance of this notice were

opened on 21st October 2003. Petitioner quoted Rs.6155/- per month for shop No.1 and Rs.4100/- per month for shop No.4. These were highest rates. However, Municipal Commissioner was of the view that the rates quoted pursuant to fresh tenders were lower than rates quoted by parties to the earlier tender. In the meanwhile, parties to earlier tender approached authorities and offered to deposit the rent and other dues as per the rates quoted by them at the earlier bid/ tender. The Municipal Commissioner accepted their offers. It was his view that it is in the interest of Pune Municipal Corporation that higher rates for these properties and assets are accepted. In other words, he felt that properties and assets of Pune Municipal Corporation be let out at competitive rates. Parties to earlier tender acting upon their offer deposited the amount. There upon, order dated 30th August 2003 cancelling their tenders was set aside and their bids/ offers were accepted by the Commissioner vide order dated 30th October 2003.

5. There is one more development inasmuch as offer of Amar Bhagat for shop No.4 was again

cancelled because the cheque issued by him in favour of P.M.C. was dishonoured. Insofar as Shop No.1 is concerned, there were no offers. Hence, fresh tenders were invited for shop No.1. One Rupinder Kaur Chaddha quoted Rs.10,100/- per month for shop No.1. Her offer was accepted vide Resolution dated 19th March 2004 passed by General Body of P.M.C. and possession of the said shop has been given to her.

6. Petitioner in W.P. 6744 of 2004 is aggrieved by this action of P.M.C. He contends that when all tenders were opened on 21st October 2003 and he was declared eligible for Shop Nos. 1 and 4, the authorities ought to have acted in pursuance of these offers and placed him in possession of these shops. He submits that his offer being highest it was not open for respondent Nos. 1 and 2 to cancel the tender process. He submits that the tender process being complete, there is no question of going back and accepting offers of parties earlier tender. He submits that he was expecting to be placed in possession of these shops and necessary documents executed in his favour. However, he

received two communications both dated 11th November 2003 by which he was informed that the Municipal Commissioner has cancelled the tenders and he should collect his deposit.

7. In the other petition viz. W.P.6772 of 2004 the position is identical, save and except that tender in respect of shop No.6 was for Rs.12,101/- and for shop No.7 Rs.12,501/-. Since the highest tenderer under the earlier tender failed to deposit the rent for three months in advance that tender was also cancelled. At re-tender, petitioner quoted Rs.4,555/- and Rs.4,444/- for the shops in question. The tenderers in the earlier tender, thereafter, approached respondents and applied for setting aside of the order of cancellation of earlier tenders. They expressed their willingness to deposit the amounts offered by them earlier. One of the tenderers viz., Wilson Hire withdrew his revised offer. Thereupon, fresh tenders were invited on 27th May 2004 for the shops in question. One Mohammed Arif submitted his quotation for Rs.7786/- for Shop No.6 and other tenderer Pragati Mahila Udyog Prathishthan was

not offered shop No.7. Reason for this is that shop No.7 is decided to be retained by the Municipal Corporation.

8. After hearing Shri Shaligram for petitioners and Shri Mujumdar for respondents, we are of the view that the respondents could not have in the facts and circumstances, brushed aside the offers of petitioners.

9. Shri Shaligram on obtaining instructions from his client states that petitioners are willing to match highest offers in respect of shops in question. He questions the decision of the authorities in disposing of the shops after accepting petitioner’s offer.

10. Although, nobody can claim a vested right in allotment of Public properties, yet, we feel that in public interest the respondents should consider the offers of petitioners herein. Since they are willing to match highest offers in respect of the shops it will be fair and proper to direct the Commissioner to reconsider the matter. It will be open for the Corporation to

take appropriate decision in accordance with the law including directing issuance of fresh tender. Needless to observe that at that stage petitioners will be at liberty to place their offers for consideration by the Municipal Corporation. We are leaving all choices open to the respondents. However, the decision to consider the petitioner's offers again is encessary as parties to earlier bids could not fulfil their obligations.

11. We are directing this course in the light of well established principles that public property should be sold generally by public auction or by inviting tenders. Observance of this rule not only fetches highest price for the property but also ensures fairness in the decision of the authorities. State and Public Authorities should undoubtedly act fairly. Their action should be legitimate. Their dealings should be above board. Nothing should be suggestive of discrimination. (**see A.I.R. 1988 S.C. 157**).

12. The successful parties have been

impleaded as respondents to these petitions. Although notices have been served none appears for them. Our attention is also invited to the fact that barring Rupinder Kaur Chadda, allottee of Shop No.1, allottees of other shops have not been placed in possession. Since the petitioner is willing to match even this offer and property in all likelihood would fetch higher price, it will be fair and in the interest of justice to direct cancellation of this allotment and take decision on the lines indicated above. These directions are issued in the light of the express statement by Shri Shaligram appearing for petitioners expressing their willingness to match all offers.

12. Petition disposed of accordingly with no orders as to costs.

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